Supreme Court, U.S.
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IN THE

Supreme Court of the United States

DANNY HARRIS JENKINS,
Petitioner,

v.

ORIN S. JACKSON AND DORIS M.J. JACKSON,
Respondents.

On Petition For Writ Of Certiorari To The
Intermediate Court Of Appeals Of The State Of Hawaii

PETITION FOR WRIT OF CERTIORARI

Danny Harris Jenkins,
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Telephone: None

Pro se

October 21, 2002

QUESTIONS PRESENTED

1. Whether the Fourteenth Amendment to the United States Constitution is violated by a trial court adopting the decision of a jury that was permitted to make a legal determination that there existed an oral agreement for the sale of real property on terms contrary to a written contract, given that there was no fraud, no facts in dispute, and no finding of part performance.

2. Whether the Fourteenth Amendment to the United States Constitution is violated by a trial court adopting the decision of a jury that was permitted to make a legal determination that the filing of a notice of lease cancellation amounts to a breach of the lease, given that there were no facts in dispute, and a right of first refusal for the purchase of the leased real property was exercised during the term of the lease and prior to the filing of the notice of lease cancellation.

PARTIES TO THE PROCEEDING

Petitioner is Danny Harris Jenkins. Petitioner is a defendant in the litigation titled *Orin S. Jackson and Doris M.J. Jackson vs. Danny Harris Jenkins, et al.*, Civil No. 90-3753-11, filed in the Circuit Court of the First Circuit, State of Hawaii. Petitioner is a resident of the State of Hawaii.

Respondents are Orin S. Jackson and Doris M.J. Jackson. Respondents are the plaintiffs in the litigation titled *Orin S. Jackson and Doris M.J. Jackson vs. Danny Harris Jenkins, et al.*, Civil No. 90-3753-11, filed in the Circuit Court of the First Circuit, State of Hawaii. Respondents are residents of the State of Hawaii.

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PETITION FOR WRIT OF CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAII

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the Intermediate Court of Appeals of the State of Hawaii in *Orin S. Jackson and Doris M.J. Jackson v. Danny Harris Jenkins, et al.* Civil No. 90-3753-11, in the Circuit Court of the First Circuit, State of Hawaii.

OPINIONS BELOW

The decision of the Intermediate Court of Appeals of the State of Hawaii, in the form of a Memorandum Opinion, was filed June 26, 2002, and is set out hereinafter as Appendix A (See H.S.Ct.R., pp. 1034-1037). The March 1, 1993 Judgment in Favor of Plaintiffs Orin S. Jackson and Doris M.J. Jackson against Defendant Danny Harris Jenkins is set out hereinafter as Appendix B (See R.V. 8, pp. 81-94). The March 1, 1993 Findings of Fact and Conclusions of Law are set out hereinafter as Appendix C (See R.V. 8, pp. 64-80). The February 5, 1993 Jury Verdict Form is set out hereinafter as Appendix D (See R.V.7, pp. 156-161). The order of the Circuit Court of the First Circuit, State of Hawaii, denying Defendant Danny Harris Jenkins' Motion to Vacate Judgment was filed February 23, 2001, and is set out hereinafter as Appendix E (See R.V.20, pp. 83A-83B). The July 18, 2002 Order granting Defendant-Appellant's Motion for Reconsideration and Vacating Memorandum Opinion of the Court (filed June 26, 2002) is set out hereinafter as Appendix F (See H.S.Ct.R., p. 1089). The decision of the Intermediate Court of Appeals of the State of Hawaii, in the form of a Memorandum Opinion, was filed July 18, 2002,

and is set out hereinafter as Appendix G (See H.S.Ct.R., pp. 1090-1093). The August 5, 2002 Order Denying Application for Writ of Certiorari is set out hereinafter as Appendix H (See H.S.Ct.R., p. 1116). The October 1, 2002 Notice and Judgment on Appeal is set out hereinafter as Appendix I (See H.S.Ct.R., pp. 1117-1121).

STATEMENT OF JURISDICTION

The Memorandum Opinion of the Intermediate Court of Appeals of the State of Hawaii was entered on June 26, 2002 at 2:56 p.m. The Order Granting Defendant-Appellant's Motion For Reconsideration and Vacating Memorandum Opinion of the Court (filed June 26, 2002) was filed on July 18, 2002 at 2:45 p.m. The Memorandum Opinion of the Intermediate Court of Appeals of the State of Hawaii was entered on July 18, 2002 at 2:46 p.m. The Supreme Court of the State of Hawaii's Order Denying Application for Writ of Certiorari was filed August 5, 2002 at 4:00 p.m. The Notice and Judgment on Appeal was filed October 1, 2002 at 10:37 a.m. This Petition for Writ of Certiorari is filed within 90 days of the August 5, 2002 filing of the Order Denying Application for Writ of Certiorari by the Supreme Court of the State of Hawaii, or on or before November 2, 2002, pursuant to Rule 13.1 of the Rules of the Supreme Court of the United States.

The Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 1331, 2201, 2202; the Fourteenth Amendment of the United States Constitution; and, by 42 U.S.C. §§ 1983 *et seq.*

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. The Fourteenth Amendment

states, in pertinent part:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Also involved are Article I, Sections 5 and 13 of the Constitution of the State of Hawaii.

> Article I, Section 5 states, in pertinent part:
> "No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry."

Article I, Section 13 states, in pertinent part:

> "In suits at common law where the value in controversy shall exceed five thousand dollars, the right to trial by jury shall be preserved."

Additionally, Hawaii Revised Statute 656 (HRS 656) (Statute of Frauds) is involved.

> HRS 656 states, in pertinent part:
> "No action shall be brought and maintained in any of the following cases: ...
> (4) Upon any contract for the sale of lands, tenements, or hereditaments, or of any interest in or concerning them; ... unless the promise, contract, or agreement, upon which the action is brought or some memorandum or note thereof, is in writing, and is signed by the party to be charged

therewith, or by some person thereunto by the party in writing lawfully authorized."

STATEMENT OF THE CASE

On May 27, 1988, Petitioner Danny Harris Jenkins ("Petitioner") and Respondents Orin S. Jackson and Doris M.J. Jackson ("Respondents") entered into a contract ("Right of First Refusal") whereby Petitioner gave Respondents the right of first refusal for the purchase of Petitioner's two parcels of real property ("Parcel 9" and "Parcel 10") at prices as specified in Section 3 of the Right of First Refusal:

> "Section 3. Purchase Price:
>
> Buyers shall have the right to purchase Parcel 09 for Forty-Five Thousand and NO/100 Dollars ($45,000.00).
>
> The purchase price for Parcel 10 shall be determined by Seller in good faith, but shall not exceed 125% of the appraised value thereof as established by appraisal done within one year of the exercise notice provided for below, by a reputable appraiser selected by Seller, and Seller shall notify Buyers in the exercise notice of the price at which Parcel 10 is being offered. In the event that Buyers deem the price contained in said notice unacceptable, they shall notify Seller in writing within 15 days, following which Seller shall advertise the property for sale in good faith for a period of three months, and Buyers shall have the right to purchase at the lower of (i) the price contained in the exercise notice or (ii) the highest price offered by a good faith purchaser in response to Seller's advertisements." (See Appendix A to the Motion to Vacate.)

Coupled to the Right of First Refusal was a lease of Parcels 9 and 10 ("Lease") to the Respondents (See Exhibit C to Appendix A to the Motion to Vacate). The relevant

portions of the Lease state:

> "Section 2. USE AND MAINTENANCE OF PREMISES:
>
> The premises are leased to lessee solely for agricultural purposes including the growing [,] harvesting, packaging [,] and marketing of vegetables, fruits, herbs and any other legal crop the lessee selects, and for establishing a single-family farm dwelling. The lessee will not use, or permit to be used, any part of the premises for any purpose other than these purposes, unless approved by lessor. Lessee has permission to keep livstock [sic] on the property. ...
>
> Section 3. TERM OF LEASE.
>
> The term or [sic] this lease shall commence on May 25, 1988 and shall terminate May 31, 2023, unless sooner terminated as hereinafter provided."

The Respondents exercised their right of first refusal by letter dated March 19, 1990 (See Appendix F to the Motion to Vacate). Subsequently, the Respondents rejected the offering price for Parcel 10 and sued Petitioner in contract, not equity, alleging an oral contract for the purchase of Parcel 10 at the price of $105,000 (less than half the offering price) and alleging that the Petitioner had breached the Right of First Refusal by refusing to sell Parcel 10 for $105,000 (R.V.5, pp. 307-333). It was also alleged that Petitioner breached the Lease by filing a notice of cancellation on November 7, 1990. Petitioner's relevant counterclaims were Count I (Breach of Contract - Possession) alleging that the Respondents were in breach of the Lease for, *inter alia*, failure to surrender Parcels 9 and 10 following the Respondents' failure to complete the purchase of the properties pursuant to the terms of the Right of First Refusal; and Count II (Breach of Lease - Damages) alleging, *inter alia*, that the Lease terminated on or before October 30, 1990 (R.V.7, pp. 26-51).

At trial, it was not disputed that Petitioner recorded a notice of cancellation of the Lease on November 7, 1990 (See Tr. 1/12/93, p. 18, line 20 to p. 21, line 6; and Tr. 2/2/93, p. 89, line 25 to p. 90, line 12). Additionally, there was no dispute regarding any of the Respondents' demonstrable claims to an oral agreement that consisted solely of having placed a house on Parcel 9 (See Tr. 1/7/93, p. 54, lines 7-8; Tr. 1/11/93, p. 139, line 25 to p. 140, line 6) and agricultural activities (Tr. 1/14/93, p. 23, line 1 to p. 25, line 24). Also, Petitioner Orin S. Jackson admitted that the actions of the Petitioners claimed to have been done in part performance were all permitted by the terms of the Lease (See Tr. 1/14/93, p. 25, lines 7-14). Finally, the Respondents denied being in breach of the Right of First Refusal (See R.V. 1, p. 86, para. 3).

Pursuant to the special jury verdict dated February 5, 1993 (R.V.7, pp. 156-161) (Appendix D hereto; Appendix D to the Motion to Vacate):

1. The jury answered yes to interrogative 1 that asks:
"1. Did the Jacksons and Jenkins have a contract to buy and sell Parcel 9 for $45,000 and Parcel 10 for $105,000 once the lawsuits affecting those parcels were concluded?"

2. The jury answered yes to interrogative 2 that asks:
"2. Has Jenkins breached the Right of First Refusal by refusing to sell Parcel 10 to the Jacksons for $105,000?"

3. The jury answered yes to interrogative 3 that asks:
"3. Did Jenkins breach the Lease by issuing and recording a cancellation notice?"

4. The jury answered no to interrogative 6 that asks:
"6. Do the Jacksons prevail on their claim against Jenkins for fraud?"

5. The jury answered yes to interrogative 16 that asks:
"16. Does Jenkins prevail against the Jacksons for

breach of contract?"

The relevant portions of the court's Findings of Fact (R.V.8, pp. 64-80) (Appendix C hereto; Appendix E to the Motion to Vacate) are:

1. "4. The purchase price for Parcel 9 is $45,000.00, and the purchase price for Parcel 10 is $105,000.00. Of the total $150,000.00 purchase price, the Jacksons already paid $35,000.00 to Mr. Jenkins in 1988."

2. "5. The Jacksons have been and are ready, willing and able to perform their obligations under the Right of First Refusal to purchase Parcels 9 and 10 and have exercised their right to purchase Parcels 9 and 10 by letter dated March 19, 1990."

3. "6. Without cause or justification, Mr. Jenkins has breached his obligations under the Right of First Refusal."

4. "12. Mr. Jenkins recorded a cancellation of the Lease in the Bureau of Conveyances of the State of Hawaii on November 7, 1990, as Document No. 90-172836."

The relevant portions of the court's Conclusions of Law (R.V.8, pp. 64-80) (Appendix C hereto; Appendix E to the Motion to Vacate) are:

1. "2. The Right of First Refusal is a valid, enforceable contract for the sale and purchase of Parcels 9 and 10 for a total price of $150,000.00, of which $35,000.00 has already been paid."

2. "5. Mr. Jenkins is in breach of the Right of First Refusal."

3. "7. Mr. Jenkins breached the Lease by recording notice of cancellation of the Lease in the Bureau of Conveyances as Document No. 90-172836."

4. "18. Pursuant to the jury verdict and the Court's directed verdict during trial, Mr. Jenkins takes nothing on his counterclaims."

The Intermediate Court of Appeals of the State of Hawaii, in its Summary Disposition Order No. 97-12 (appeal nos. 16978 and 17456) (See H.S.Ct.R. pp. 1079-1081) entered on February 11, 1997, found, in effect, at para. 3, the issue of whether or not the Lease terminated as a matter of law on March 19, 1990 to be moot, and at para. 2, found "... substantial evidence to establish the existence of an oral contract for the sale of Parcel 10 for $105,000" (However, the "substantial evidence" relied upon was not identified).

Subsequently, on January 4, 2001, Petitioner filed Defendant Danny Harris Jenkins' Motion to Vacate Judgment that specifically raised the issue of a violation of the Fourteenth Amendment to the Constitution of the United States regarding due process and equal protection (See R.V.19, pp. 20-198). The said motion was denied by the Circuit Court of the First Circuit, State of Hawaii, pursuant to order filed February 23, 2001 (See R.V. 20, pp. 83A-83B). The said February 23, 2001 order states, in relevant part:

> "Defendant Danny Harris Jenkins' Motion to Vacate Judgment, filed January 4, 2001, came on for hearing on February 1, 2001, at 9:00 a.m. before the Honorable Victoria S. Marks. Philip J. Leas appeared on behalf of Plaintiffs ORIN S. JACKSON and DORIS M. JACKSON and DANNY HARRIS JENKINS appeared on behalf of himself, pro se. The Court having reviewed all memoranda and affidavits submitted and heard the arguments of the parties and being apprised in the premises,
>
> IT IS HEREBY ORDERED that Defendant Danny Harris Jenkins' Motion to Vacate Judgment, filed January 4, 2001, is DENIED."

Petitioner's appeal of the said February 23, 2001 order was denied pursuant to the Memorandum Opinion of the Intermediate Court of Appeals, State of Hawaii, filed on July 18, 2002 (appeal no. 24169) (See H.S.Ct.R., pp. 1090-1093). The said July 18, 2002 order states, in relevant part:

> "We conclude that (a) Jenkins has failed to show that the alleged errors were errors, and (b) any alleged errors that were errors (1) were not violations of Jenkins' right to due process of law and (2) did not deprive the trial court of jurisdiction to convey parcels 9 and 10 to the Jacksons free and clear of the mortgage liens.
>
> CONCLUSION
>
> Accordingly, we affirm the circuit court's February 23, 2001 'Order Denying Defendant Danny Harris Jenkins' Motion to Vacate Judgment Filed on January 4, 2001.' "

Petitioner's application to the Supreme Court of the State of Hawaii for a writ of certiorari was denied pursuant to order filed August 5, 2002 (See H.S.Ct.R., p. 1116). The said August 5, 2002 order states: "Petitioner-Appellant's application for writ of certiorari filed on July 25, 2002, is hereby denied."

The Notice and Judgment on Appeal was filed October 1, 2002. The said notice and judgment states, in pertinent part:

> "Pursuant to Memorandum Opinion of the Intermediate Court of Appeals entered on July 18, 2002, the circuit court's 'Order Denying Defendant Danny Harris Jenkins' Motion to Vacate Judgment Filed on January 4, 2001,' which order was entered on February 23, 2001, is affirmed."

REASONS FOR GRANTING THE WRIT

I.

THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAII MISAPPLIED THE DUE PROCESS AND EQUAL PROTECTION PRINCIPLES OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION BY PERMITTING A TRIAL COURT TO ADOPT THE ERRONEOUS DECISIONS OF A JURY ON QUESTIONS OF LAW, WHICH SHOULD HAVE BEEN ANSWERED BY THE TRIAL COURT, FINDING THAT THERE EXISTED AN ORAL AGREEMENT FOR THE SALE OF REAL PROPERTY ON TERMS CONTRARY TO A WRITTEN CONTRACT

ABSTRACT

It is a misapplication of the equal protection provision of the Fourteenth Amendment to the United States Constitution for a trial court to alter the terms of a written contract for the conveyance of real property in the absence of fraud or on the basis of oral testimony that does not establish part performance. Additionally, it is a misapplication of the due process provision of the Fourteenth Amendment to the United States Constitution to allow a trial court to permit a jury to decide a question of law and to allow the trial court to then adopt the decision of the jury that is contrary to how the trial court should have decided the issue. Accordingly, the argument below begins by first establishing that there was no finding of fraud and no facts in dispute regarding the acts claimed by the Respondents to have been done in part performance of the alleged oral contract. Second, it is established that because there was no fraud and no facts in dispute, it was error for the trial court to permit the jury to decide the question of whether there existed an oral contract for the conveyance of Petitioner's Parcel 10 for $105,000.00 and whether Petitioner breached the Right of First Refusal

by refusing to convey Parcel 10 for $105,000.00. Third, it is established that the trial court's adoption of the jury's finding was not harmless. Fourth, it is established that Petitioner's right to a jury trial was violated. Finally, the argument concludes that Petitioner's rights to equal protection of the law and to due process were violated as a result of the trial court permitting the jury to decide a question of law and then adopting the jury's harmful finding. Thus, in affirming the trial court's judgment, the Intermediate Court of Appeals of the State of Hawaii misapplied the equal protection of the law and due process principles of the Fourteenth Amendment to the United States Constitution.

ARGUMENT

First, there was no finding of fraud and no disputed facts regarding the acts alleged by Respondents to have been done in part performance of the alleged oral agreement. The jury answered no to interrogative 6 of the special verdict form that asks: "Do the Jacksons prevail on their claim against Jenkins for fraud?" Consequently, there being no fraud on the part of Petitioner, fraud cannot serve as the basis for introducing parol evidence for the purpose of altering the terms of a written contract (See *Cosmopolitan Financial Corp. v. Runnels*, 2 Haw. App. 33, 37-38, 625 P.2d 390, 395 (1981) :

> "The parol evidence rule is invoked to bar the testimony of prior contemporaneous negotiations and agreements that vary or alter the terms of a written instrument. ... As a rule of substantive law, it determines the parties' legally enforceable contractual obligations and precludes consideration of extrinsic evidence to the contrary ... absent evidence of mistake or fraud ..." (citations omitted)).

Additionally, there was no dispute regarding any of the acts Respondents claimed to have done in part performance of

the alleged oral agreement, which consisted solely of having placed a house on Parcel 9 (See Tr. 1/7/93, p. 54, lines 7-8; Tr. 1/11/93, p. 139, line 25 to p. 140, line 6) and agricultural activities (Tr. 1/14/93, p. 23, line 1 to p. 25, line 24). Also, it was admitted by Respondent Orin S. Jackson that the actions claimed to have been done in part performance were all permitted by the terms of the Lease (See Tr. 1/14/93, p. 25, lines 7-14). Thus, there was no finding of fraud and there were no facts in dispute regarding the acts alleged by Respondents to have been done in part performance of the alleged oral agreement.

Second, the question of whether there existed an oral contract for the conveyance of Parcel 10 for $105,000 and whether Petitioner thus breached the Right of First Refusal by refusing to sell Parcel 10 for $105,000 was one of law for the trial court, not the jury. The jury answered yes to interrogative 1 of the special verdict form that asks, "Did the Jacksons and Jenkins have a contract to buy and sell Parcel 9 for $45,000 and Parcel 10 for $105,000 once the lawsuits affecting those parcels were concluded?" Additionally, the jury answered yes to interrogative 2 of the special verdict form that asks, "Has Jenkins breached the Right of First Refusal by refusing to sell Parcel 10 to the Jacksons for $105,000?" However, as noted in the paragraph above, there was no finding of fraud, no dispute regarding the acts alleged by Respondents to have been done in part performance, and Respondent Orin S. Jackson admitted that the acts alleged to have been done in part performance were all permitted by the terms of the Lease. Thus, there being no facts in dispute, as a matter of law, "... the application of rules of law to the undisputed facts is for the court and not the jury" (75A Am.Jur.2d *Trial* § 714, at p. 342 (1991); citing *Benz v. Zobel*, 255 Wis. 542, 39 N.W.2d 713, 13 A.L.R.2d 795 (1949); also see *Hinchman v. Lincoln*, 124 U.S. 38, 48, 31 L.Ed. 337, 8 S.Ct. 369 (1887): "... where the facts in relation to a contract of sale alleged to be within the statute of frauds are

not in dispute, it belongs to the court to determine their legal effect." (citations omitted); Additionally, see *Nelson v. Montgomery Ward & Co.*, 312 U.S. 373, 376, 85 L.Ed. 897, 61 S.Ct. 593 (1941): "The effect of admitted facts is a question of law." (citations omitted)). Thus, it was error for the trial court to permit the jury to decide whether or not there existed a contract for the conveyance of Parcel 10 for $105,000 and whether or not Petitioner breached the Right of First Refusal by refusing to convey Parcel 10 for $105,000.

Third, the jury's decisions that there existed a contract for the conveyance of Parcel 10 for $105,000, which is contrary to the written terms of the Right of First Refusal, and that Petitioner breached the Right of First Refusal by refusing to convey Parcel 10 for $105,000 were not harmless. As noted above, Respondent Orin S. Jackson admitted that the acts alleged to have been done in part performance were all permitted by the terms of the Lease. However, the decision in *Lopez vs. Soy Young*, 9 Haw. 117, 119 (1893) states in pertinent part:

> "... in order to take an oral contract out of the statute of frauds on the ground of part performance, it must appear among other things, that the acts of part performance are not only such as are referable to a contract such as that alleged but that they are referable to no other title ..."

The statute of frauds referred to is Hawaii Revised Statute 656, which states in pertinent part:

> "No action shall be brought and maintained in any of the following cases: ... (4) Upon any contract for the sale of lands, tenements, or hereditaments, or of any interest in or concerning them; ... unless the

> promise, contract, or agreement, upon which the action is brought, or some memorandum or note thereof, is in writing, and is signed by the party to be charged therewith, or by some person thereunto by the party in writing lawfully authorized."

Thus, because the alleged acts of part performance were referable to the Lease, the Respondents did not establish part performance as required by law to take their alleged oral contract out of the statute of frauds. Consequently, there being no fraud and no part performance, it is not permitted, as a matter of law, to alter the terms of the Right of Refusal to permit the Respondents to purchase Parcel 10 for $105,000. In other words, contrary to the statute of frauds, the Respondents were permitted to bring and maintain suit in contract, rather than in equity, and to prevail against Petitioner in contract, on the basis of an allegation of an oral agreement contrary to the terms of a written contract (the Right of First Refusal) for the conveyance of real property. Thus, the jury's decision that there existed a contract for the conveyance of Parcel 10 for $105,000 and that Petitioner breached the Right of First Refusal by refusing to convey Parcel 10 for $105,000 was contrary to how the trial court should have decided the issue. It is well settled law that "[e]ven though a question which should have been answered by the court is erroneously submitted to the jury, the error is harmless if the jury answers it the way the court should have answered it ..." (Emphasis added) (See 75A Am.Jur.2d *Trial* § 722, p. 349 (1991); citing *Rosen v. United States*, 161 U.S. 29, 43, 40 L.Ed. 606, 16 S.Ct. 434, 16 S.Ct. 480 (1896); *Minneapolis & S.L. Railway v. Columbus Rolling Mill*, 119 U.S. 149, 152, 30 L.Ed. 376, 7 S.Ct. 168 (1886): "The submission of a question of law to the jury is no ground of exception if they decide it aright."; *Pence v. Langdon*, 99 U.S. 578, 580, 25 L.Ed. 420 (1878)). Consequently, the jury's decisions that there existed a contract for the conveyance of

Parcel 10 for $105,000, which is contrary to the written terms of the Right of First Refusal, and that Petitioner breached the Right of First Refusal by refusing to convey Parcel 10 for $105,000, were not harmless because they are contrary to law and thus contrary to how the trial court should have answered the questions.

Petitioner's state right to a jury trial was violated. The right to a jury trial is an individual right protected by Article I, Section 13 of the Constitution of the State of Hawaii, which states:

> "In suits at common law where the value in controversy shall exceed five thousand dollars, the right to trial by jury shall be preserved."

As pointed out above, the questions of whether there existed a contract for the conveyance of Parcel 10 for $105,000 and whether Petitioner breached the Right of First Refusal by refusing to convey Parcel 10 for $105,000 were questions of law to be decided by the trial court and not the jury. Additionally, it is a matter of well settled law that "[t]o dispense with either court or jury, or to permit one to disregard the province of the other, is to impinge on the right to a jury trial" (See 75A Am.Jur.2d *Trial* § 714, at p. 341 (1991); citing *Slocum v. New York Life Ins. Co.*, 228 U.S. 364, 382, 57 L.Ed. 879, 33 S. Ct. 523 (1913):

> "In the trial by jury, ... both the court and the jury are essential factors. To the former is committed a power of direction and superintendence, and to the latter the ultimate determination of the issues of fact. Only through the cooperation of the two, each acting within its appropriate sphere, can the constitutional right be satisfied. And so, to dispense with either or to permit one to disregard the province of the other is to impinge on that right.").

Thus, the trial court violated Petitioner's state right to a jury

trial by adopting the jury's findings that were contrary to how the trial court should have answered the questions that were erroneously presented to the jury.

Petitioner's rights pursuant to the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution were violated. The state rights to due process and equal protection of the law are individual rights protected by Article I, Section 5 of the Constitution of the State of Hawaii, which states:

> "No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of the person's civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry."

Thus, the violation of Petitioner's state right to a jury trial pursuant to Article I, Section 13 of the Constitution of the State of Hawaii constitutes a violation of Petitioner's right to due process. Also, the erroneous decision occurred as a direct result of the violation of Petitioner's state right to a jury trial and due process and thus constitutes a violation of Petitioner's right to equal protection of the law guarantied by Article I, Section 5 of the Constitution of the State of Hawaii. Additionally, any violation of the state rights to due process, equal protection, or to a jury trial are violations of the due process and equal protection provisions of the Fourteenth Amendment to the United States Constitution. Consequently, the July 18, 2002 decision of the Intermediate Court of Appeals of the State of Hawaii to affirm the February 23, 2001 Order Denying Defendant Danny Harris Jenkins' Motion to Vacate Judgment Filed January 4, 2001, and thereby affirming the March 1, 1993 Judgment as well, and thus to allow the trial court to permit the jury to decide questions of law that should have been answered by the trial

court and to allow the trial court to then adopt the jury's erroneous findings, was a violation of Petitioner's right to due process, equal protection, and to a jury trial under state law, and was thus a violation of Petitioner's right to due process and equal protection guarantied by the Fourteenth Amendment to the United States Constitution.

II.

THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAII MISAPPLIED THE DUE PROCESS AND EQUAL PROTECTION PRINCIPLES OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION BY PERMITTING A TRIAL COURT TO ADOPT THE ERRONEOUS DECISION OF A JURY ON A QUESTION OF LAW, WHICH SHOULD HAVE BEEN ANSWERED BY THE TRIAL COURT, FINDING THAT PETITIONER BREACHED A LEASE

ABSTRACT

It is a misapplication of the due process and equal protection provisions of the Fourteenth Amendment to the United States Constitution to allow a trial court to permit a jury to decide a question of law and for the trial court to then adopt the decision of the jury that is contrary to how the trial court should have decided the issue. Accordingly, the argument below begins by first establishing that Petitioner, as a matter of law, did not breach the Lease. Second, it is established that because there were no facts in dispute, it was error for the trial court to permit the jury to decide the question of whether Petitioner breached the Lease. Third, it is established that the trial court's adoption of the jury's finding was not harmless. Fourth, it is established that Petitioner's state right to a jury trial was violated. Finally, the argument concludes that Petitioner's right to due process and equal protection of the law was violated as a result of

the trial court permitting the jury to decide a question of law and then adopting the jury's harmful finding. Thus, in affirming the trial court's judgment, the Intermediate Court of Appeals of the State of Hawaii misapplied the due process and equal protection principles of the Fourteenth Amendment to the United States Constitution.

ARGUMENT

The jury answered yes to interrogative 3 of the special verdict form that asks: "Did Jenkins breach the Lease by issuing and recording a cancellation notice." However, this decision by the jury is incorrect. As noted in the Findings of Fact at paragraph 5 (R.V.8, p. 65) (quoted hereinabove at p. 7), the Respondents exercised their right of first refusal by letter dated March 19, 1990. Thus, having exercised their right of first refusal during the term of the Lease, the Lease terminated as a matter of law at the time Respondents exercised their right of first refusal (See *Northwest Tel. Club, Inc. v. Gross Seattle, Inc.*, 634 P.2d 837, 842 (Wash. 1981): "Once a lessee exercises an option, including a right of first refusal, the landlord/tenant relationship ceases, and the lessee becomes a vendee."); also *Park West Village, Inc. v. Royal Street Co.*, 714 P.2d 1137, 1141 (Utah 1986): "It is well-established law that when a lessee exercises an option to purchase during the term of the lease, the lease and the relation of lessor and lessee is terminated. The relation of vendor and vendee is then created. All obligations under the lease are extinguished."); also see: 51C C.J.S. *Landlord & Tenant* §§ 82(1)(b)(1968); citing *American Strawboard Co. v. Haldeman Paper Co.*, Ohio, 83 F. 619, 27 C.C.A. 634)(1897). Also, according to the Findings of Fact at paragraph 12 (R.V.8, p. 66) (quoted hereinabove at p. 7), Petitioner recorded the notice of lease cancellation on November 7, 1990, after the Lease had already terminated as a matter of law. Consequently, Petitioner did not breach the Lease.

The question of whether Petitioner was in breach of the Lease was one of law for the trial court, not the jury. It was not disputed that Petitioner recorded the notice of Lease cancellation on November 7, 1990 (See Tr. 1/12/93, p. 18, line 20 to p. 21, line 6; and Tr. 2/2/93, p. 89, line 25 to p. 90, line 12). Thus, there being no facts in dispute, as a matter of law, "... the application of rules of law to the undisputed facts is for the court and not the jury" (75A Am.Jur.2d *Trial* § 714, at p. 342 (1991)) (citations omitted). Thus, it was error for the trial court to permit the jury to decide whether Petitioner was in breach of the Lease.

The jury's decision that Petitioner breached the Lease was not harmless. As established above, Petitioner did not breach the Lease as a matter of law; thus, the jury's decision that Petitioner breached the Lease was contrary to how the trial court should have decided the issue. It is well settled law that "[e]ven though a question which should have been answered by the court is erroneously submitted to the jury, the error is harmless if the jury answers it the way the court should have answered it ..." (Emphasis added) (See 75A Am.Jur.2d *Trial* § 722, p. 349 (1991)) (citations omitted). Consequently, the jury's decision that Petitioner breached the Lease is harmful because it is contrary to law and thus contrary to how the trial court should have answered the question.

Petitioner's state right to a jury trial was violated. As pointed out above, there were no facts in dispute; thus, the question of whether Petitioner breached the Lease by filing a notice of lease cancellation on November 7, 1990 was a question of law to be decided by the trial court and not the jury. Additionally, it is a matter of well settled law that "[t]o dispense with either court or jury, or to permit one to disregard the province of the other, is to impinge on the right to a jury trial" (See 75A Am.Jur.2d *Trial* § 714, at p. 341 (1991)) (citations omitted). Thus, the trial court violated

Petitioner's state right to a jury trial by adopting the jury's finding that was contrary to how the trial court should have answered the question erroneously presented to the jury.

Petitioner's rights pursuant to the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution were violated. The state rights to due process and equal protection of the law are individual rights protected by Article I, Section 5 of the Constitution of the State of Hawaii. Thus, the violation of Petitioner's right to a jury trial pursuant to Article I, Section 13 of the Constitution of the State of Hawaii constitutes a violation of Petitioner's said right to due process. Also, the erroneous decision finding Petitioner in breach of the Lease occurred as a direct result of the violation of Petitioner's said rights to a jury trial and due process and thus constitutes a violation of Petitioner's right to equal protection of the law guaranteed by Article I, Section 5 of the Constitution of the State of Hawaii. Additionally, any violation of the state rights to due process, equal protection of the law, or a jury trial is a violation of the due process and equal protection provisions of the Fourteenth Amendment to the United States Constitution. Consequently, the July 18, 2002 decision of the Intermediate Court of Appeals of the State of Hawaii to affirm the February 23, 2001 Order Denying Defendant Danny Harris Jenkins' Motion to Vacate Judgment Filed January 4, 2001, and thereby affirming the March 1, 1993 Judgment as well, and thus to allow the trial court to permit the jury to decide a question of law that should have been answered by the trial court and to allow the trial court to then adopt the jury's erroneous finding, was a violation of Petitioner's right to due process, equal protection, and to a jury trial under state law, and thus a violation of Petitioner's right to due process and equal protection guarantied by the Fourteenth Amendment to the United States Constitution.

CONCLUSION

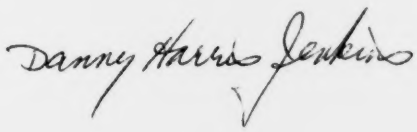
Contrary to the statute of frauds, Respondents were permitted to bring and maintain suit in contract, rather than in equity, alleging an oral agreement for the purchase of real property on terms contrary to the terms of a written contract. Additionally, Respondents were permitted to prevail on their claim despite their failure to establish the existence of part performance that was necessary to remove their claim to an oral agreement from the operation of the statute of frauds and despite the fact that the jury specifically found that there was no fraud by Petitioner. Consequently, the trial court permitted the altering of a written contract in the absence of fraud and in the absence of any part performance supporting Respondents' claims to an oral agreement contrary to the terms of the written contract. Thus, Petitioner's constitutional right to equal protection of the law was violated.

Additionally, the trial court accepted answers to questions of law erroneously presented to a jury that were contrary to how the trial court should have answered the questions. Thus, the trial court violated Petitioner's state rights to a jury trial, equal protection of the law, and to due process. Violation of these state constitutional rights constitutes a violation of Petitioner's rights to equal protection of the law and to due process pursuant to the Fourteenth Amendment to the United States Constitution.

Consequently, the July 18, 2002 decision of the Intermediate Court of Appeals of the State of Hawaii to affirm the February 23, 2001 Order Denying Defendant Danny Harris Jenkins' Motion to Vacate Judgment Filed January 4, 2001, and thereby affirming the March 1, 1993 Judgment as well, constitutes a misapplication of the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution.

Accordingly, for the reasons set forth above, the petition for a writ of certiorari should be granted.

Respectfully Submitted,



Danny Harris Jenkins
1164 Bishop Street
Suite 124-412
Honolulu, Hawaii 96813
Tel.: None

Pro se

October 21, 2002

Appendix A

FILED

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K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

NO. 24169

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

ORIN S. JACKSON and DORIS M. J. JACKSON, Plaintiffs-Appellees, v. DANNY HARRIS JENKINS, Defendant-Appellant, and JOHN DOES 1-10, DOE PARTNERSHIPS 1-5, and DOE CORPORATIONS 1-5, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 90-3753)

MEMORANDUM OPINION
(By: Burns, C.J., Watanabe and Lim, JJ.)

Defendant-Appellant Danny Harris Jenkins (Jenkins) appeals from the circuit court's February 23, 2001 "Order Denying Defendant Danny Harris Jenkins' Motion to Vacate Judgment Filed on January 4, 2001" (February 23, 2001 Order). We affirm.

BACKGROUND

The relevant events occurred as follows.

Prior Appeal Nos. 16978 and 17456

February 5, 1993	In Jackson v. Jenkins, Civil No. 90-3753-11, First Circuit Court, State of Hawai'i, the jury presented its special verdict.
February 26, 1993	The court entered its Findings of Fact and Conclusions of Law.
March 1, 1993	The court entered its Judgment in Favor of Plaintiffs Orin S. Jackson and Doris M. J. Jackson Against Defendant Danny Harris Jenkins (March 1, 1993 Judgment).
February 11, 1997	In response to Jenkins' appeal in nos. 16978 and 17456, this court affirmed the March 1, 1993 Judgment.

Prior Appeal No. 18571

November 15, 1993	The circuit court entered an order granting a motion to dismiss the complaint filed in Jenkins v. Cades Schutte Fleming & Wright, Civil No. 93-3359-08, First Circuit Court, State of Hawai'i.
April 28, 1997	In response to Jenkins' appeal in no. 18571, this court affirmed the order.

Prior Appeal No. 19698

January 21, 1994	The circuit court entered an order granting a motion to dismiss the

	complaint filed in Jenkins v. Cades Schutte Fleming & Wright, Civil No. 93-3956-10, First Circuit Court, State of Hawai'i.
May 5, 1997	In response to Jenkins' appeal in no. 19698, this court affirmed the order.

This Appeal No. 24169

January 4, 2001	Jenkins filed a motion, pursuant to Hawai'i Rules of Civil Procedure Rule 60(b)(4), to vacate the March 1, 1993 Judgment.
February 23, 2001	The circuit court entered its order denying the motion.
March 23, 2001	Jenkins filed the notice of this appeal.

DISCUSSION

It has been concluded that a judgment is void when the court entering it acted in a manner inconsistent with due process of law. 11 Wright, Miller & Kane, Federal Practice and Procedure, Civil 2d § 2862 (1995).

In the First Amended Opening Brief, Jenkins presents the following four points on appeal:

1. POINT 1: the court below erred in denying the motion to vacate the Judgment because

> the trial court erred in permitting the jury to decide whether or not [Jenkins] was in breach of the Lease.
>
> . . . .
>
> 2. POINT 2: The court below erred in denying the motion to vacate the Judgment because the trial court erred in permitting the jury to decide whether or not there existed an oral contract to convey Parcel 10 for $105,000. . . .[1/]
>
> . . . .
>
> 3. POINT 3: The Court below erred in denying the motion to vacate the Judgment because the trial court erred by ignoring the jury's answer to special verdict interrogative 16 which was inconsistent with special verdict interrogatives 1, 2, and 3.
>
> . . . .
>
> 4. POINT 4: The court below erred in denying the motion to vacate the Judgment because the trial court erred in approving a form of deed for Parcels 9 and 10 that deleted any reference to the existing mortgages encumbering those properties.[2/]

(Footnotes added.)

Jenkins contends that the March 1, 1993 Judgment is void because the errors alleged in his four points led to the

---

1/ Defendant-Appellant Danny Harris Jenkins (Jenkins) also argues that, as a matter of law, the acts claimed to have

done in part performance (placing a house on Parcel 9 and various agricultural activities) were insufficient to establish part performance. In appeal nos. 16978 and 17456, this court decided in its Summary Disposition Order No. 97-12, entered on February 11, 1997, in relevant part as follows: "2. There was substantial evidence to establish the existence of an oral contract for the sale of Parcel 10 for $105,000."

2/ In Jenkins v. Cades Schutte Fleming & Wright, Civil No. 93-3359-08, First Circuit Court, State of Hawai'i, Jenkins sued Plaintiffs-Appellees Orin S. Jackson and Doris M. J. Jackson seeking to enforce his view of the March 1, 1993 Judgment. The trial court confirmed the conveyance of Parcels 9 and 10 free and clear. In appeal no. 18571, we summarily dismissed the appeal by Jenkins.

March 1, 1993 Judgment, and each error violated Jenkins' right to due process.

We conclude that (a) Jenkins has failed to show that the alleged errors were errors, and (b) any alleged errors that were errors were not violations of Jenkins' right to due process of law.

CONCLUSION

Accordingly, we affirm the circuit court's February 23, 2001 "Order Denying Defendant Danny Harris Jenkins' Motion to Vacate Judgment Filed on January 4, 2001."

DATED: Honolulu, Hawai'i, June 26, 2002.

On the briefs:
Danny Harris Jenkins
Defendant-Appellant, *pro se*

Philip J. Leas and
James H. Ashford (Cades,
Schutte Fleming & Wright)
For Plaintiffs-Appellees.

"S/ James A. Burns"
Chief Judge

"S/ Corrine K.A. Watanabe"
Associate Judge

"S/ Lim, J.J."
Associate Judge

Appendix B

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

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"S/ B. Nishida "
B. NISHIDA
CLERK

Of Counsel:
CADES SCHUTTE FLEMING & WRIGHT

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Honolulu, Hawaii 96813
Telephone: 521-9200

Attorneys for Plaintiffs
ORIN S. JACKSON and DORIS M.J. JACKSON

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ORIN S. JACKSON and DORIS M.J. JACKSON, Plaintiffs, vs. DANNY HARRIS JENKINS and JOHN DOES 1-10, DOE PARTNERSHIPS 1-5; and	CIVIL NO. 90-3753-11 (Contract) JUDGMENT IN FAVOR OF PLAINTIFFS ORIN S. JACKSON AND DORIS M.J. JACKSON AGAINST DEFENDANT DANNY HARRIS JENKINS; EXHIBIT "A"

DOE CORPORATIONS 1-5,	TRIAL DATE: January 4, 1993
Defendants.	JUDGE: Honorable Melvin K. Soong

JUDGMENT IN FAVOR OF PLAINTIFFS ORIN S. JACKSON AND DORIS M. J. JACKSON AGAINST DEFENDANT DANNY HARRIS JENKINS

Pursuant to the Court's Findings of Fact and Conclusions of Law entered in this case and the jury verdict rendered in this case on February 5, 1993, JUDGMENT IS HEREBY ENTERED in favor of plaintiffs ORIN S. JACKSON and DORIS M.J. JACKSON against

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11TH DIVISION

Defendant DANNY HARRIS JENKINS (Social Security Number 545-64-1679) as follows:

1. The plaintiffs shall recover from the Defendant the sum of $ 141,381.06 comprised of $32,100.00 trebled damages awarded by the jury for unfair or deceptive acts or practices, $18,000.00 awarded by the jury for negligent misrepresentation, $6,281.06 awarded by the Court in taxation of costs and $ 85,000.00 awarded by the Court for attorneys' fees.

2. The plaintiffs shall have specific performance of their right to purchase Oahu Tax Map Key Parcel 5-3-05:09 ("Parcel 9") for $45,000 and Oahu Tax Map Key Parcel 5-3-05:10 ("Parcel 10") for $105,000 pursuant to the Right of First Refusal between the Defendant and the Plaintiffs dated May 27, 1988, as follows:

(a) The Plaintiffs shall receive full credit for their downpayment of $35,000 paid in 1988.

(b) To the extent that the Jacksons assume any mortgage or mortgages placed on Parcels 9 and 10 or either of them by the Defendant, the mortgage indebtedness so assumed (including principal, interest and any other charges owing to the mortgagee) shall be applied in reduction of the $115,000 balance of the purchase price for Parcels 9 and 10. The judgment amount awarded in paragraph 1 above (or any portion thereof) may also be offset or credited by the Plaintiffs, against the $115,000 balance of the purchase price, whether or not the Plaintiffs assume any mortgage now encumbering title to the subject property.

(c) Upon payment, offset, credit or other satisfaction of the $115,000 balance of the purchase price within 180 days after entry of this judgment, the Defendant is ordered and directed to execute, acknowledge and deliver a deed to the Plaintiffs in the form of Exhibit A annexed hereto and otherwise to convey good legal and marketable title to Parcels 9 and 10 to the Plaintiffs subject only to the reservations and encumbrances identified in Exhibit A annexed hereto.

(d) If the Defendant shall fail to comply with the terms of the foregoing subparagraph (c) within ten (10) days after the Plaintiffs or their counsel request conveyance of the subject property, and upon affidavit of either of the Plaintiffs or Plaintiffs' counsel setting forth such failure, the clerk of this Court is hereby authorized and ordered to execute, acknowledge and deliver to the Plaintiffs a deed in the form of Exhibit A annexed hereto, on behalf of the Defendant, all

with the same force and effect as if the Defendant had personally so acted.

3. Pursuant to the Plaintiffs' claim for declaratory relief, it is hereby ordered, declared, adjudged and decreed that:

(a) the Lease dated May 27, 1988, between the Defendant, as Lessor, and the Plaintiffs, as Lessee, and recorded in the Bureau of Conveyances in Book 21985 at Page 272 is a lease of residential lots within the meaning of, and subject to, Chapter 516, Hawaii Revised Statutes (as amended);

(b) the Lease is valid and remains in full force and effect; and

(c) the cancellation of the Lease recorded by the Defendant on November 7, 1990, in the Bureau of Conveyances as Document No. 90-172836 is invalid and is hereby expunged and of no force or effect.

4. The Defendant takes nothing on his counterclaims, all of which are dismissed with prejudice.

5. The Court reserves jurisdiction sufficient to ensure performance and satisfaction of this judgment and to resolve any title defects or encumbrances should the Defendant not deliver marketable title or not deliver title free from encumbrances other than the encumbrances and reservations identified in Exhibit A annexed hereto.

DATED: Honolulu, Hawaii, February 26 , 1993.

"S/ Melvin K. Soong"

JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

\ "initials/ MKS"

OWEN H. HELLEKSON, JR.
Attorney for Defendant
Danny Harris Jenkins

ORIN S. JACKSON AND DORIS M.J. JACKSON v. DANNY HARRIS JENKINS, Civil No. 90-3753-11 (Contracts); Judgment in Favor of Plaintiffs Orin S. Jackson and Doris M.J. Jackson Against Defendant Danny Harris Jenkins

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LAND COURT SYSTEM REGULAR SYSTEM

Return by Mail ( ) Pickup ( ) To:

TITLE OF DOCUMENT: WARRANTY DEED

PARTIES TO DOCUMENT:

GRANTOR: DANNY HARRIS JENKINS

GRANTEE: ORIN S. JACKSON AND DORIS M. J. JACKSON, as tenants by the entirety

---

PROPERTY: TMK: 5-3-05:9 and 10
Punaluu, Koolauloa, City
and County of Honolulu

PRIOR CONVEYANCE:
LIBER/PAGE:
23358/457,
13810/87 and
21146/768

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That DANNY HARRIS JENKINS, unmarried, of Honolulu, Hawaii, hereinafter called "Grantor", in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration to Grantor paid by ORIN S. JACKSON and DORIS M. J. JACKSON, husband and wife, whose post office address is P.O. Box 279,

EXHIBIT "A"

Laie, Hawaii, 96862, hereinafter collectively called "Grantee", the receipt of which is hereby acknowledged, does hereby grant and convey unto the Grantee, in the tenancy set forth below, all of the real property described in Exhibit "A" attached hereto and incorporated herein by this reference;

TOGETHER WITH the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of Grantor both at law and in equity therein and thereto;

SUBJECT, HOWEVER, to the encumbrances set forth in said Exhibit "A";

RESERVING, HOWEVER, unto Grantor, his heirs, personal representatives and assigns,

AS TO Oahu Tax Map Key No. 5-3-05-10: a perpetual easement for vehicular, pedestrian and utility purposes over, across, under and along that certain strip of land four (4) feet wide abutting the boundary between Oahu Tax Map Key No. 5-3-05:10 and Oahu Tax Map Key No. 5-3-5:08, the boundary of which is the eastern boundary between Oahu Tax Map Key No. 5-3-05:10 and Oahu Tax Map Key No. 5-3-05:08, and the western boundary of which is parallel to and four (4) feet in a westerly direction from the said eastern boundary of Oahu Tax Map Key No. 5-3-05:10, (being a portion of the land granted hereby);

AS TO Oahu Tax Map Key Nos. 5-3-05-9 and 10: a perpetual easement for vehicular, pedestrian and utility purposes over, across, under and along that certain strip of land sixty (60) feet wide tapering to a point at its western end, the southern boundary of which is formed by the boundaries between Oahu Tax Map Key Nos. 5-3-5-9 and 10 and those certain adjacent parcels known by Oahu Tax Map Key Nos. 5-3-04:34 and 5-3-7:20 and the northern boundary of which is parallel to and sixty (60) feet on the northern (Kahuku) side of the boundary between parcel Oahu Tax Map Key No. 5-3-04:34 on the one hand and parcels Oahu Tax Map Key No. 5-3-05:09 and 5-3-5:10 on the other hand, substantially as shown on Exhibit "B" attached hereto (being a portion of the land granted hereby).

Grantee shall not have the right to grant use of said easements to any person or entity other than to Grantor or his

designees, except that Grantee shall have the right to assign Grantee's right to use said easements incident to the transfer of Grantee's interest in the property conveyed hereby. Grantee shall have the right of pedestrian and vehicular access over said easements. Grantee shall have the right to install utilities upon and over the 4-foot easement except where the 4-foot easement is also contained in the 60-foot easement. Grantee's rights shall be appurtenant to Oahu Tax Map Key Nos. 5-3-5-9 and 10. Said reserved easements in favor of the Grantor are not easements in gross but are appurtenant to and for the benefit of land in which Grantor presently has an interest, including that parcel designated by Oahu Tax Map Key No. 5-3-7:21, as well as such other parcels as Grantor may designate from time to time.

TO HAVE AND TO HOLD the same, together with the improvements thereon and the rights, easements, privileges and appurtenances thereunto belonging or appertaining, unto the Grantee, as TENANTS BY THE ENTIRETY, and Grantee's assigns and the heirs, personal representatives, legal successors and assigns of Grantee's survivor, forever.

AND THE GRANTOR hereby covenants with the Grantee that Grantor is lawfully seised in fee simple of the real property described in said Exhibit "A", and has good right to sell and convey the same; that the same are free and clear of all encumbrances, except as aforesaid and except for real property taxes for the current fiscal year, which are to be paid by the Grantee; and that Grantor will and Grantor's heirs and personal representatives shall WARRANT and DEFEND the same unto the Grantee in the tenancy aforesaid, and his, her or their respective heirs, personal representatives and assigns, against the lawful claims and demands of all persons, except as aforesaid, and except that Grantor here shall not be deemed to have warranted that either parcel contemplated by this conveyance has recorded

access to a public highway other than as specifically provided in Exhibit "A."

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, individuals or corporations, and their and each of their representatives successors, heirs, personal representatives and assigns, according to the context thereof. If these presents shall be signed by two or more Grantors or by two or more Grantees, all covenants of such parties shall for all purposes be joint and several.

IN WITNESS WHEREOF, the parties hereto have executed these presents on this ___ day of _____, 1993.

_____

DANNY HARRIS JENKINS

"GRANTOR"

_____

ORIN S. JACKSON

_____

DORIS M. J. JACKSON

"GRANTEE"

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

On this ___ day of _____, 1993, before me personally appeared DANNY HARRIS JENKINS, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

_____

Subscribed and sworn to before me
this _____ day of _____, 1993.

_____
Notary Pubic, State of Hawaii

My commission expires: _____

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

On this ___ day of _____, 1993, before me personally appeared ORIN S. JACKSON AND DORIS M.J. JACKSON, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

_____

_____

Subscribed and sworn to before me
this _____ day of _____, 1993.

_____
Notary Pubic, State of Hawaii

My commission expires: _____

FIRST:

ALL of that certain lot or parcel of land (being portions of Grant 3053 to Kaaimanu et al, Grant 3025 to W. Lane and Royal Patent 7865, Land Commission Award 4350, Apana 2 to Kauolani), situate at Puheemiki and Waiono, Koolauloa, City and County of Honolulu, State of Hawaii, described as follows:

Beginning at the Southeast corner of this parcel of land, and on the West side of former Koolau Railway's 40-foot right-of-way, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAHANA" being 6,596.59 feet North and 9,272.91 feet West, and running by azimuths measured clockwise from true South:

1.	64° 15′	86.15	feet along Royal Patent 7359, Land commission Award 3878, Apana 2 to Puuwaawaa;
2.	162° 50′	60.64	feet along Royal Patent 3096 and 3517, Land commission Award 4436, Apana 2 to Kalolohe;
3.	90° 00′	299.70	feet along Royal Patents 3096 and 3517, Land Commission Award 4436, Apana 2 to Kalolohe;
4.	170° 40′	123.89	feet along Grant 3053 to Kaaimanu, et al;
5.	262° 00′	339.56	feet along Royal Patent 1295, Land Commission

			Award 6955, Apana 3 to Kaaumoana;
6.	337° 25′	205.80	feet along the West side of former Koolau Railway's 40-foot right-of-way to the point of beginning and containing an area of 57,274 square feet or 1.315 acres.

(Oahu Tax Map Key No. 5-3-5-10)

TOGETHER with perpetual easements for access purposes, sewage lines and other utilities over, under and across the former Koolau Railway's 40-foot right-of-way denoted as Parcels 8 (0.53

EXHIBIT "A"

acre) of Oahu Tax Map Key: 5-3-05, and Parcel 35 (0.26± acre) of Oahu Tax Map Key: 5-3-04.

ALSO TOGETHER WITH a connecting sewer line easement as set forth in agreement dated February 14, 1990, recorded March 22, 1990, as instrument No. 90-40832.

SUBJECT, HOWEVER, to the reservation unto the STATE OF HAWAII, as contained in Correction Deed executed by the STATE OF HAWAII to ZIONS SECURITIES CORPORATION, a Utah corporation, DATED May 26, 1978, recorded in the Bureau of Conveyances of the State of Hawaii (the "Bureau") in Liber 12946, Page 219.

Being the land conveyed to DANNY HARRIS JENKINS by instrument dated June 28, 1979, recorded in the Bureau in Liber 13810, Page 87, and by instrument dated July 7, 1982, recorded in the Bureau in Liber 21146, Page 768.

SECOND:

ALL of that certain parcel of land situate approximately 80 feet West of Old Koolau Railway, 40-foot right-of-way, City and County of Honolulu, State of Hawaii, being Exclusion 4, Royal Patents 3096 and 3517, Land Commission Award 4436 to Kalolohe, described as follows:

Beginning at a pipe at the Southwest corner of this parcel of land, and on the Northeasterly side of Royal Patent 4939, Land Commission Award 3752, Apana 4 to Ukeke, the coordinates of which referred to Government Survey Triangulation Station "KAHANA" being 6,540.83 feet North and 9,663.59 feet West and running by azimuths measured clockwise from true South:

1.	176° 37′	76.40	feet along Portion of Grant 3025 to W. Lane to a pipe;
2.	270° 00′	299.70	feet along Royal Patent 7865 Land Commission Award 4350, Apana 2 to Kauolani to a pipe;
3.	342° 50′	60.64	feet along Portion of Grant 3025 to W. Lane to a pipe;
4.	64° 15′	28.54	feet along Royal Patent 7359, Land Commission Award 3878, Apana 2 to

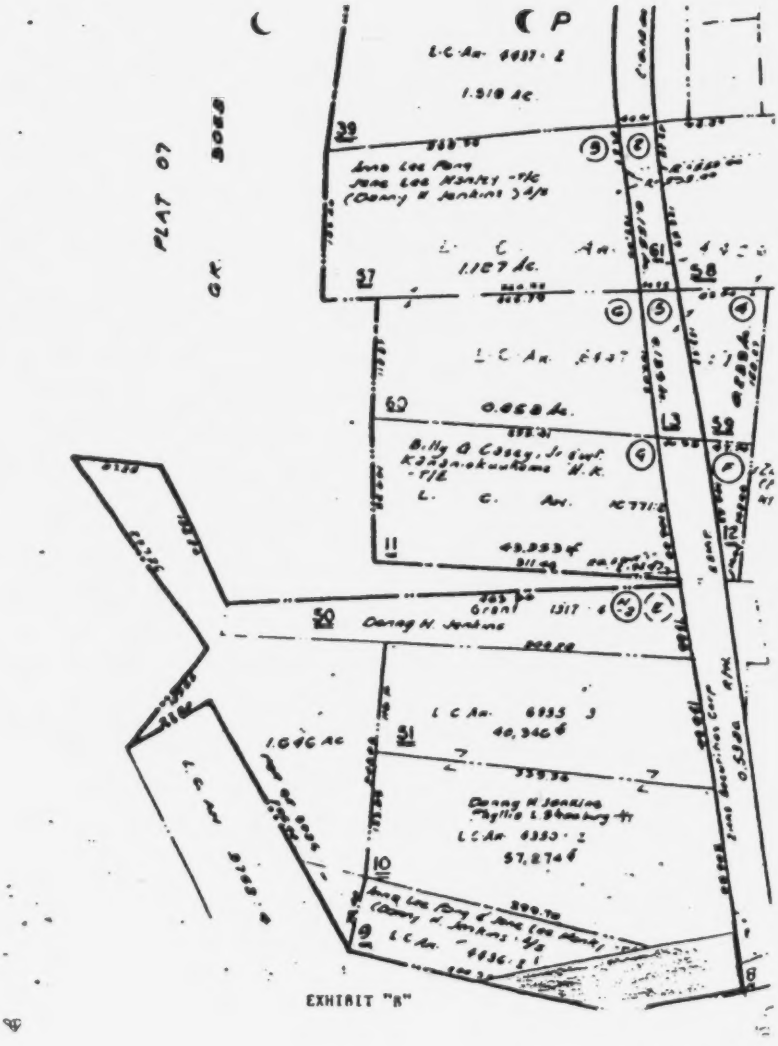
			Puuwaawaa to a pipe;
5.	329° 15′	2.99	feet along Royal Patent 7359, Land Commission Award 3878, Apana 2 to Puuwaawaa to a pipe;
6.	89° 20′	288.93	feet along Grant 3025 to W. Lane to the point of Beginning and containing an area of 22,742 square feet, or 0.522 acre, more or less.

(Oahu Tax Map Key No. 5-5-5-9)

AND TOGETHER WITH access rights over and across Lot L, being Tax Map Key No. 5-3-07-20, as recorded in Liber 10099 at Page 9.

BEING the land described in Deed dated September 7, 1984, and recorded in the Bureau of Liber 23358 at Page 457.

SUBJECT, AS TO BOTH PARCELS FIRST AND SECOND, to that certain Lease dated May 27, 1988, recorded in the Bureau in Liber 21985 at Page 272, and to title to all minerals and metallic mines reserved to the State of Hawaii.



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Appendix C

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

1993 MAR -1 AM 9:07
"S/ B. Nishida "
B. NISHIDA
CLERK

Of Counsel:
CADES SCHUTTE FLEMING & WRIGHT

PHILIP J. LEAS 1467-0
JAMES H. ASHFORD 4743-0
1000 Bishop Street, 14th Floor
Honolulu, Hawaii 96813
Telephone: 521-9200

Attorneys for Plaintiffs
ORIN S. JACKSON and DORIS M.J. JACKSON

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ORIN S. JACKSON and DORIS M.J. JACKSON, Plaintiffs, vs. DANNY HARRIS JENKINS and JOHN DOES 1-10, DOE PARTNERSHIPS 1-5; and	CIVIL NO. 90-3753-11 (Contract) FINDINGS OF FACT AND CONCLUSIONS OF LAW; EXHIBIT A

DOE CORPORATIONS 1-5, Defendants.	TRIAL DATE: January 4, 1993 JUDGE: Honorable Melvin K. Soong

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on for jury trial before the Honorable Melvin K. Soong commencing on January 4, 1993 at 1:30 p.m. Plaintiffs Orin S. Jackson and Doris M.J. Jackson (the "Jacksons") were present and were represented by Philip J. Leas and James H. Ashford. Defendant Danny Harris Jenkins ("Mr. Jenkins") was present and was represented by Owen H. Hellekson, Jr. The Court,

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11TH DIVISION

having considered all of the relevant, admissible evidence, the credibility of the witnesses, the argument and memoranda of counsel and the jury verdict rendered in this case on February 5, 1993, makes the following findings of fact and conclusions of law:

I. FINDING OF FACT

1. At all relevant times herein, the Jacksons were residents of the City and County of Honolulu, State of Hawaii.

2. At all relevant times herein, Mr. Jenkins was a resident of the City and County of Honolulu, State of Hawaii.

3. The Jacksons have a Right of First Refusal

contract which allows the Jacksons to purchase two pieces of property from Mr. Jenkins. The properties are identified as having Tax Map Key Numbers 1-5-3-5-9 ("Parcel 9") and 1-5-3-5-10 ("Parcel 10").

4. The purchase price for Parcel 9 is $45,000.00, and the purchase price for Parcel 10 is $105,000.00. Of the total $150,000.00 purchase price, the Jacksons already paid $35,000.00 to Mr. Jenkins in 1988.

5. The Jacksons have been and are ready, willing and able to perform their obligations under the Right of First Refusal to purchase Parcels 9 and 10 and have exercised their right to purchase Parcels 9 and 10 by letter dated March 19, 1990.

6. Without cause or justification, Mr. Jenkins has breached his obligations under the Right of First Refusal.

7. Parcel 9 and Parcel 10 are unique and are the site of the Jacksons' residence.

8. Any legal remedy for Mr. Jenkins' breach of the Right of First Refusal, including monetary damages, would be insufficient to compensate the Jacksons adequately.

9. There are no unfulfilled conditions precedent to performance of the Right of First Refusal; and the remaining performances include delivery of good title by warranty deed from Mr. Jenkins and payment, offset, credit or other satisfaction of the $115,000.00 owing to Mr. Jenkins.

10. The Jacksons and Mr. Jenkins entered into a

lease of Parcels 9 and 10 (the "Lease"), dated May 27, 1988, and recorded in the Bureau of Conveyances in Book 21985 at Page 272, as amended by Amendment to Lease dated May 27, 1988, pursuant to which the Jacksons took possession of the premises and installed their residence thereon.

11. The combined area of Parcels 9 and 10 is less than two acres.

12. Mr. Jenkins recorded a cancellation of the Lease in the Bureau of Conveyances of the State of Hawaii on November 7, 1990, as Document No. 90-172836.

13. Prior to recording the cancellation of the Lease, Mr. Jenkins did not comply with the requirements of section 516-64, Hawaii Revised Statutes, prerequisite to forfeiture of a residential lease.

14. Section 22 of the Lease provides for recovery of all costs and expenses, including attorneys' fees and costs, reasonably incurred in enforcing, protecting, or preserving the Lease.

15. The Jacksons are the prevailing parties in this case and have reasonably and necessarily incurred costs and attorneys' fees of $ 85,000.00 to date in enforcing, protecting and preserving the Lease, in prosecuting their claim for unfair or deceptive acts or practices and in proving the truth of matters denied by Mr. Jenkins in requests for admissions submitted pursuant to Rule 36, Hawaii Rules of Civil Procedure.

16. If any of the above findings of fact shall be

deemed to be conclusions of law, the court intends that every such finding shall be construed as a conclusion of law.

II. CONCLUSIONS OF LAW

1. The Court has jurisdiction over this lawsuit and the parties.

2. The Right of First Refusal is a valid, enforceable contract for the sale and purchase of Parcels 9 and 10 for a total price of $150,000.00, of which $35,000.00 has already been paid.

3. The Right of First Refusal is fully capable of being performed according to its terms.

4. After paying the $35,000.00 downpayment and upon exercising the Right of First Refusal, the Jacksons were vested

with equitable title to Parcels 9 and 10, subject to satisfaction of the balance of the purchase price.

5. Mr. Jenkins is in breach of the Right of First Refusal.

6. The Lease is a valid, enforceable contract which leases Parcels 9 and 10 from Mr. Jenkins to the Jacksons for a thirty-five year term commencing May 27, 1988.

7. Mr. Jenkins breached the Lease by recording notice of cancellation of the Lease in the Bureau of

Conveyances as Document No. 90-172836.

8. Mr. Jenkins has no legal or equitable excuse or justification for his breach of the Lease.

9. The Jacksons have not forfeited their rights under the Lease.

10. The Jacksons have not forfeited their rights under the Right of First Refusal.

11. Parcels 9 and 10 are residential lots under Chapter 516, Hawaii Revised Statutes (as amended), and the Lease is subject to the provisions of Chapter 516, Hawaii Revised Statutes (as amended).

12. In attempting to cancel the Lease, Mr. Jenkins did not comply with the provisions of Hawaii Revised Statutes, § 516-64 (1985).

13. The Jacksons are entitled to specific performance of the Right of First Refusal by delivery of good legal title to

them by a warranty deed signed by or for Mr. Jenkins in the form of Exhibit A annexed hereto upon their payment, offset, credit or other satisfaction of the $115,000.00 balance of the purchase price within 180 days after entry of judgment in this case.

14. To the extent that the Jacksons assume any mortgage or mortgages placed on Parcels 9 and 10 or either of them by Mr. Jenkins, the mortgage indebtedness so

assumed (including principal, interest and any other charges owing to the mortgagee) shall be applied in reduction of the $115,000.00. Any judgment amount (or portion thereof) awarded to the Jacksons against Mr. Jenkins may also be offset or credited by them against the $115,000.00, whether or not the Jacksons assume any mortgage now encumbering title to the property.

15. The cancellation of the Lease recorded on November 7, 1990, as Document No. 90-172836 is invalid and shall be expunged.

16. Pursuant to section 480-13, Hawaii Revised Statutes, the amount of $10,700.00 awarded to the Jacksons by the jury shall be trebled to $32,100.00. The Jacksons shall also recover $18,000.00 for negligent misrepresentation as awarded by the jury.

17. The Jacksons shall also recover costs of $6,281.06 and attorneys' fees of $ 85,000.00 pursuant to: a) sections 480-13 and 607-17, Hawaii Revised Statutes: b) Hawaii Rules of Civil Procedure 37 (c) and 54; and c) section 22 of the Lease.

18. Pursuant to the jury verdict and the Court's directed verdict during trial, Mr. Jenkins takes nothing on his counterclaims.

19. If any of the above conclusions of law shall be deemed to be a finding of fact, the court intends that every such conclusion be construed as a finding of fact.

DATED: Honolulu, Hawaii February 26, 1993.

"S/ Melvin K. Soong"

JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

"initials/ MKS"

OWEN H. HELLEKSON, JR.
Attorney for Defendant
Danny Harris Jenkins

ORIN S. JACKSON AND DORIS M.J. JACKSON v. DANNY HARRIS JENKINS, Civil No. 90-3753-11 (Contracts); Findings of Fact and Conclusion of Law

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LAND COURT SYSTEM REGULAR SYSTEM

Return by Mail ( ) Pickup ( ) To:

TITLE OF DOCUMENT: WARRANTY DEED

PARTIES TO DOCUMENT:

GRANTOR: DANNY HARRIS JENKINS

GRANTEE: ORIN S. JACKSON AND DORIS M. J. JACKSON, as tenants by the entirety

---

PROPERTY: TMK: 5-3-05:9 and 10
Punaluu, Koolauloa, City
and County of Honolulu

PRIOR CONVEYANCE:
LIBER/PAGE:
23358/457,
13810/87 and
21146/768

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That DANNY HARRIS JENKINS, unmarried, of Honolulu, Hawaii, hereinafter called "Grantor", in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration to Grantor paid by ORIN S. JACKSON and DORIS M. J. JACKSON, husband and wife, whose post office address is P.O. Box 279,

EXHIBIT "A"

Laie, Hawaii, 96862, hereinafter collectively called "Grantee", the receipt of which is hereby acknowledged, does hereby grant and convey unto the Grantee, in the tenancy set forth below, all of the real property described in Exhibit "A" attached hereto and incorporated herein by this reference;

TOGETHER WITH the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interest of Grantor both at law and in equity therein and thereto;

SUBJECT, HOWEVER, to the encumbrances set forth in said Exhibit "A";

RESERVING, HOWEVER, unto Grantor, his heirs, personal representatives and assigns,

AS TO Oahu Tax Map Key No. 5-3-05-10: a perpetual easement for vehicular, pedestrian and utility purposes over, across, under and along that certain strip of land four (4) feet wide abutting the boundary between Oahu Tax Map Key No. 5-3-05:10 and Oahu Tax Map Key No. 5-3-5:08, the boundary of which is the eastern boundary between Oahu Tax Map Key No. 5-3-05:10 and Oahu Tax Map Key No. 5-3-05:08, and the western boundary of which is parallel to and four (4) feet in a westerly direction from the said eastern boundary of Oahu Tax Map Key No. 5-3-05:10, (being a portion of the land granted hereby);

AS TO Oahu Tax Map Key Nos. 5-3-05-9 and 10: a perpetual easement for vehicular, pedestrian and utility purposes over, across, under and along that certain strip of land sixty (60) feet wide tapering to a point at its western end, the southern boundary of which is formed by the boundaries between Oahu Tax Map Key Nos. 5-3-5-9 and 10 and those certain adjacent parcels known by Oahu Tax Map Key Nos. 5-3-04:34 and 5-3-7:20 and the northern boundary of which is parallel to and sixty (60) feet on the northern (Kahuku) side of the boundary between parcel Oahu Tax Map Key No. 5-3-04:34 on the one hand and parcels Oahu Tax Map Key No. 5-3-05:09 and 5-3-5:10 on the other hand, substantially as shown on Exhibit "B" attached hereto (being a portion of the land granted hereby).

Grantee shall not have the right to grant use of said easements to any person or entity other than to Grantor or his

designees, except that Grantee shall have the right to assign Grantee's right to use said easements incident to the transfer of Grantee's interest in the property conveyed hereby. Grantee shall have the right of pedestrian and vehicular access over said easements. Grantee shall have the right to install utilities upon and over the 4-foot easement except where the 4-foot easement is also contained in the 60-foot easement. Grantee's rights shall be appurtenant to Oahu Tax Map Key Nos. 5-3-5-9 and 10. Said reserved easements in favor of the Grantor are not easements in gross but are appurtenant to and for the benefit of land in which Grantor presently has an interest, including that parcel designated by Oahu Tax Map Key No. 5-3-7:21, as well as such other parcels as Grantor may designate from time to time.

TO HAVE AND TO HOLD the same, together with the improvements thereon and the rights, easements, privileges and appurtenances thereunto belonging or appertaining, unto the Grantee, as TENANTS BY THE ENTIRETY, and Grantee's assigns and the heirs, personal representatives, legal successors and assigns of Grantee's survivor, forever.

AND THE GRANTOR hereby covenants with the Grantee that Grantor is lawfully seised in fee simple of the real property described in said Exhibit "A", and has good right to sell and convey the same; that the same are free and clear of all encumbrances, except as aforesaid and except for real property taxes for the current fiscal year, which are to be paid by the Grantee; and that Grantor will and Grantor's heirs and personal representatives shall WARRANT and DEFEND the same unto the Grantee in the tenancy aforesaid, and his, her or their respective heirs, personal representatives and assigns, against the lawful claims and demands of all persons, except as aforesaid, and except that Grantor here shall not be deemed to have warranted that either parcel contemplated by this conveyance has recorded

access to a public highway other than as specifically provided in Exhibit "A."

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, individuals or corporations, and their and each of their representatives successors, heirs, personal representatives and assigns, according to the context thereof. If these presents shall be signed by two or more Grantors or by two or more Grantees, all covenants of such parties shall for all purposes be joint and several.

IN WITNESS WHEREOF, the parties hereto have executed these presents on this ___ day of _____, 1993.

_____

DANNY HARRIS JENKINS

"GRANTOR"

_____

ORIN S. JACKSON

_____

DORIS M. J. JACKSON

"GRANTEE"

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

On this ___ day of _____, 1993, before me personally appeared DANNY HARRIS JENKINS, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

_____

Subscribed and sworn to before me
this _____ day of _____, 1993.

_____
Notary Pubic, State of Hawaii

My commission expires: _____

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

On this ___ day of _____, 1993, before me personally appeared ORIN S. JACKSON AND DORIS M.J. JACKSON, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

_____

_____

Subscribed and sworn to before me
this _____ day of _____, 1993.

_____
Notary Pubic, State of Hawaii

My commission expires: _____

FIRST:

ALL of that certain lot or parcel of land (being portions of Grant 3053 to Kaaimanu et al, Grant 3025 to W. Lane and Royal Patent 7865, Land Commission Award 4350, Apana 2 to Kauolani), situate at Puheemiki and Waiono, Koolauloa, City and County of Honolulu, State of Hawaii, described as follows:

Beginning at the Southeast corner of this parcel of land, and on the West side of former Koolau Railway's 40-foot right-of-way, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAHANA" being 6,596.59 feet North and 9,272.91 feet West, and running by azimuths measured clockwise from true South:

1.	64° 15′	86.15	feet along Royal Patent 7359, Land commission Award 3878, Apana 2 to Puuwaawaa;
2.	162° 50′	60.64	feet along Royal Patent 3096 and 3517, Land commission Award 4436, Apana 2 to Kalolohe;
3.	90° 00′	299.70	feet along Royal Patents 3096 and 3517, Land Commission Award 4436, Apana 2 to Kalolohe;
4.	170° 40′	123.89	feet along Grant 3053 to Kaaimanu, et al;
5.	262° 00′	339.56	feet along Royal Patent

			1295, Land Commission Award 6955, Apana 3 to Kaaumoana;
6.	337° 25′	205.80	feet along the West side of former Koolau Railway's 40-foot right-of-way to the point of beginning and containing an area of 57,274 square feet or 1.315 acres.

(Oahu Tax Map Key No. 5-3-5-10)

TOGETHER with perpetual easements for access purposes, sewage lines and other utilities over, under and across the former Koolau Railway's 40-foot right-of-way denoted as Parcels 8 (0.53

acre) of Oahu Tax Map Key: 5-3-05, and Parcel 35 (0.26± acre) of Oahu Tax Map Key: 5-3-04.

ALSO TOGETHER WITH a connecting sewer line easement as set forth in agreement dated February 14, 1990, recorded March 22, 1990, as instrument No. 90-40832.

SUBJECT, HOWEVER, to the reservation unto the STATE OF HAWAII, as contained in Correction Deed executed by the STATE OF HAWAII to ZIONS SECURITIES CORPORATION, a Utah corporation, DATED May 26, 1978,

recorded in the Bureau of Conveyances of the State of Hawaii (the "Bureau") in Liber 12946, Page 219.

Being the land conveyed to DANNY HARRIS JENKINS by instrument dated June 28, 1979, recorded in the Bureau in Liber 13810, Page 87, and by instrument dated July 7, 1982, recorded in the Bureau in Liber 21146, Page 768.

SECOND:

ALL of that certain parcel of land situate approximately 80 feet West of Old Koolau Railway, 40-foot right-of-way, City and County of Honolulu, State of Hawaii, being Exclusion 4, Royal Patents 3096 and 3517, Land Commission Award 4436 to Kalolohe, described as follows:

Beginning at a pipe at the Southwest corner of this parcel of land, and on the Northeasterly side of Royal Patent 4939, Land Commission Award 3752, Apana 4 to Ukeke, the coordinates of which referred to Government Survey Triangulation Station "KAHANA" being 6,540.83 feet North and 9,663.59 feet West and running by azimuths measured clockwise from true South:

1.	176° 37′	76.40	feet along Portion of Grant 3025 to W. Lane to a pipe;
2.	270° 00′	299.70	feet along Royal Patent 7865 Land Commission Award 4350, Apana 2 to Kauolani to a pipe;
3.	342° 50′	60.64	feet along Portion of Grant 3025 to W. Lane to a pipe;

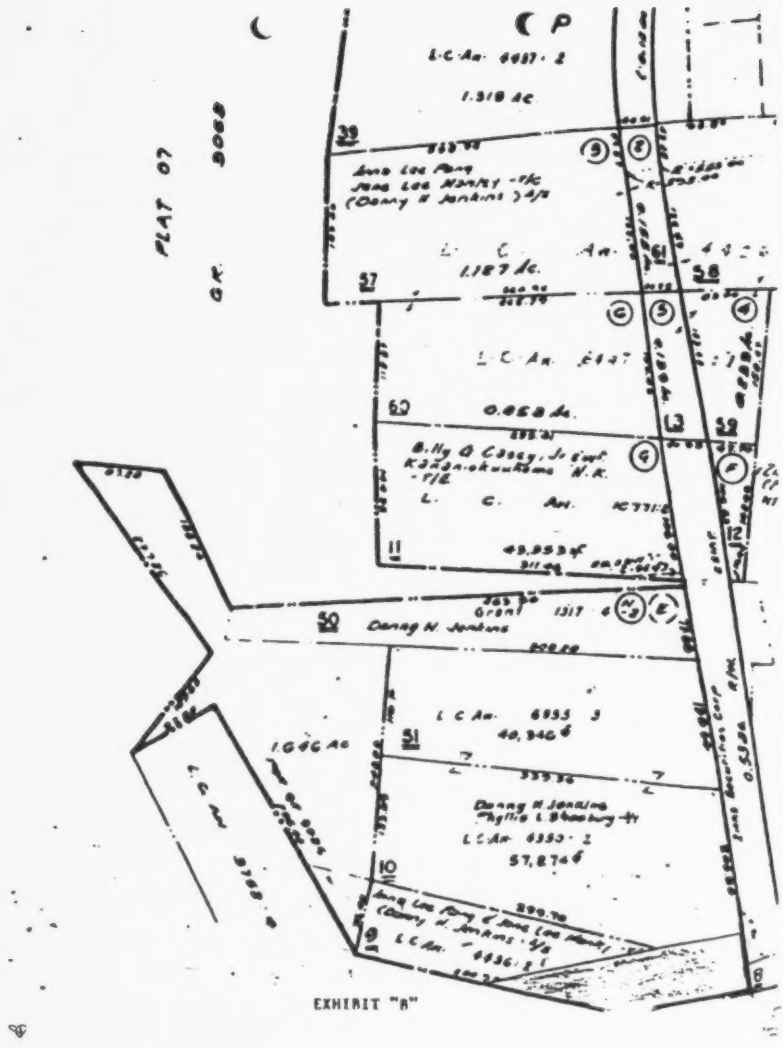
4.	64° 15′	28.54	feet along Royal Patent 7359, Land Commission Award 3878, Apana 2 to Puuwaawaa to a pipe;
5.	329° 15′	2.99	feet along Royal Patent 7359, Land Commission Award 3878, Apana 2 to Puuwaawaa to a pipe;
6.	89° 20′	288.93	feet along Grant 3025 to W. Lane to the point of Beginning and containing an area of 22,742 square feet, or 0.522 acre, more or less.

(Oahu Tax Map Key No. 5-5-5-9)

AND TOGETHER WITH access rights over and across Lot L, being Tax Map Key No. 5-3-07-20, as recorded in Liber 10099 at Page 9.

BEING the land described in Deed dated September 7, 1984, and recorded in the Bureau of Liber 23358 at Page 457.

SUBJECT, AS TO BOTH PARCELS FIRST AND SECOND, to that certain Lease dated May 27, 1988, recorded in the Bureau in Liber 21985 at Page 272, and to title to all minerals and metallic mines reserved to the State of Hawaii.



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Appendix D

First Circuit Court
State of Hawaii
FILED
FEB 5 1993 19____
1:50 o'clock P M.
"S/ B. Nagata"
Clerk, Eleventh Division

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ORIN S. JACKSON and DORIS M.J. JACKSON, Plaintiffs, vs. DANNY HARRIS JENKINS and JOHN DOES 1-10, DOE PARTNERSHIPS 1-5, and DOE CORPORATIONS 1-5, Defendants.	CIVIL NO. 90-3753-11 VERDICT FORM

VERDICT FORM

VERDICT FORM

The parties to this action are Plaintiffs ORIN S. JACKSON and DORIS M.J. JACKSON (collectively referred to as the "Jacksons"), and Defendant DANNY HARRIS JENKINS ("Jenkins").

The jury must answer all of the questions, except as otherwise indicated. To understand what the issues are being submitted to you, you may wish to read over the entire Verdict Form before proceeding to answer. Follow all directions carefully. Answer the questions in numerical order. An earlier answer may excuse you from answering a later question. Each answer requires the agreement of at least ten (10) jurors: however, the same ten (10) jurors need not agree on all answers. If you do not understand any question or if you wish to communicate with the Court on any other subject, you must do so in writing through the bailiff.

1. Did the Jacksons and Jenkins have a contract to buy and sell Parcel 9 for $45,000 and Parcel 10 for $105,000 once the lawsuits affecting those parcels were concluded?

ANSWER: Yes _X_ No __

2. Has Jenkins breached the Right of First Refusal by refusing to sell Parcel 10 to the Jacksons for $105,000.00?

ANSWER: Yes _X_ No __

3. Did Jenkins breach the Lease by issuing and recording a cancellation notice?

ANSWER: Yes _X_ No __

Unfair Trade Practices Claim

4. Do the Jacksons prevail on their claim against Jenkins for unfair or deceptive acts or practices in the conduct of trade or commerce?

ANSWER: Yes X No ___

5. If your answer to Question 4 is "Yes", please state the amount of damages to be awarded to the Jacksons for unfair or deceptive acts or practices.

$ 10,700.00

Fraud Claim

6. Do the Jacksons prevail on their claim against Jenkins for fraud?

ANSWER: Yes ___ No X

(If you answer "Yes", please go to Question 7. If you answer "No", please go to Question 8.)

7. Please state the amount to be awarded to the Jacksons for fraud if that amount is different from the amount in Question 5.

$ ----------

Negligent Misrepresentation Claim

8. Do the Jacksons prevail against Jenkins on their claim for negligent misrepresentation?

ANSWER: Yes X No ___

9. Please state the damages to be awarded to the Jacksons for negligent misrepresentation if that amount is different from amounts awarded in Questions 5 and 7.

$ 18,000.00

Breach of Contract Damages

10. Do the Jacksons prevail against Jenkins on their claim for breach of contract damages?

ANSWER: Yes X No ___

(If you answer "Yes", please go to Question 11. If you answer "No", please go to Question 12.)

11. Please state the amount to be awarded to the Jacksons for breach of contract damages if that amount is different from amounts awarded in Questions 5, 7, and 9.

$ 0.00

Emotional Distress Claim

12. Do the Jacksons prevail on their claim against Jenkins for infliction of emotional distress?

ANSWER: Yes X No ___

(If you answer "Yes", please go to Question 13. If you answer "No", please go to Question 14.)

13. Please state the damages to be awarded to the Jacksons for their emotional distress.

$ 0.00

(Please go to Question 14.)

14. Are punitive damages to be assessed in favor of the Jacksons against Jenkins?

ANSWER: Yes X No ___

15. If your answer to Question 14 is "Yes", please state the amount of punitive damages to be awarded to the Jacksons.

$ 18,000.00

16. Does Jenkins prevail against the Jacksons for breach of contract?

ANSWER: Yes X No ___

17. If your answer to Question 16 is "Yes", please state the amount of damages to be awarded to Jenkins for breach of contract.

$ 0.00

18. Does Jenkins prevail on his claim against the Jacksons for fraud?

ANSWER: Yes ___ No X

19. If your answer to Question 18 is "Yes", please state the amount of damages to be awarded to Jenkins for fraud.

$ ----------

Please stop here and have the foreperson sign this verdict form below.

DATED: Honolulu, Hawaii, 5 February 1993

"S/ Benjamin B. Lai"

Foreperson

Benjamin B. Lai

Appendix E

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

2001 FEB 23 AM 10:43
"S/ M. Tanaka"
M. TANAKA
CLERK

DUPLICATE ORIGINAL

CADES SCHUTTE FLEMING & WRIGHT

PHILIP J. LEAS 1467-0
JAMES H. ASHFORD 4743-0
1000 Bishop Street, 14th Floor
Honolulu, Hawaii 96813
Telephone: 521-9200

Attorneys for Plaintiffs ORIN S. JACKSON and DORIS M.J. JACKSON

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ORIN S. JACKSON and DORIS M.J. JACKSON, Plaintiffs, vs. DANNY HARRIS JENKINS and JOHN DOES 1-10, DOE	CIVIL NO. 90-3753-11 (Contract) ORDER DENYING DEFENDANT DANNY HARRIS JENKINS' MOTION TO VACATE JUDGMENT FILED ON JANUARY 4, 2001

PARTNERSHIPS 1-5; and DOE CORPORATIONS 1-5, Defendants.	Hearing: Date: February 1, 2001 Time: 9:00 a.m. Judge: Victoria S. Marks

ORDER DENYING DEFENDANT DANNY HARRIS JENKINS' MOTION TO VACATE JUDGMENT FILED ON JANUARY 4, 2001

Defendant Danny Harris Jenkins' Motion to Vacate Judgment, filed January 4, 2001, came on for hearing on February 1, 2001, at 9:00 a.m. before the Honorable Victoria S. Marks. Philip J. Leas appeared on behalf of Plaintiffs ORIN S. JACKSON and DORIS M. JACKSON and DANNY HARRIS JENKINS appeared on behalf of himself, pro se. The Court having reviewed all memoranda and affidavits

DUPLICATE ORIGINAL

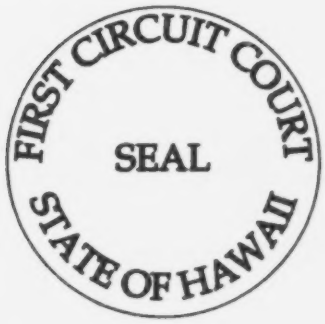
submitted and heard the arguments of the parties and being apprised in the premises,

IT IS HEREBY ORDERED that Defendant Danny Harris Jenkins' Motion to Vacate Judgment, filed January 4, 2001, is DENIED.

DATED: Honolulu, Hawaii, FEB 22 2001

"S/ Victoria S. Marks"

JUDGE OF THE ABOVE-ENTITLED COURT
"S/ Victoria S. Marks"



APPROVED AS TO FORM:
/ / / "Initials: V.S.M."

Danny Harris Jenkins
Defendant Pro Se

Appendix F

FILED

2002 JUL 18 P 2:45

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

NO. 24169

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

ORIN S. JACKSON and DORIS M. J. JACKSON, Plaintiffs-Appellees, v. DANNY HARRIS JENKINS, Defendant-Appellant, and JOHN DOES 1-10, DOE PARTNERSHIPS 1-5, and DOE CORPORATIONS 1-5, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 90-3753)

ORDER GRANTING
DEFENDANT-APPELLANT'S MOTION FOR
RECONSIDERATION AND VACATING MEMORANDUM
OPINION OF THE COURT
(By: Burns, C.J., Watanabe and Lim, JJ.)

Upon consideration of Defendant-Appellant's Motion for Reconsideration, filed on July 8, 2002, the memorandum in support, and the files and records herein,

IT IS HEREBY ORDERED that the motion is granted, and the Memorandum Opinion of the court entered on June

26, 2002, is vacated. A new opinion shall be entered

DATED: Honolulu, Hawai'i, July 18, 2002.

On the briefs:

Danny Harris
Defendant-Appellant, *pro se*

Philip J. Leas and
James H. Ashford (Cades,
Schutte Fleming & Wright)
For Plaintiffs-Appellees.

"S/ James S. Burns"
Chief Judge

"S/ Corrine K.A. Watanabe"
Associate Judge

"S/ Lim J.J."
Associate Judge

Appendix G

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2002 JUL 18 P 2:46

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

NO. 24169

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

ORIN S. JACKSON and DORIS M. J. JACKSON, Plaintiffs-Appellees, v. DANNY HARRIS JENKINS, Defendant-Appellant, and JOHN DOES 1-10, DOE PARTNERSHIPS 1-5, and DOE CORPORATIONS 1-5, Defendants

APPEAL FROM THE FIRST CIRCUIT COURT
(CIV. NO. 90-3753)

MEMORANDUM OPINION
(By: Burns, C.J., Watanabe and Lim, JJ.)

Defendant-Appellant Danny Harris Jenkins (Jenkins) appeals from the circuit court's February 23, 2001 "Order Denying Defendant Danny Harris Jenkins' Motion to Vacate Judgment Filed on January 4, 2001" (February 23, 2001 Order). We affirm.

BACKGROUND

The relevant events occurred as follows.

Prior Appeal Nos. 16978 and 17456

February 5, 1993	In Jackson v. Jenkins, Civil No. 90-3753-11, First Circuit Court, State of Hawai'i the jury presented its special verdict.
February 26, 1993	The court entered its Findings of Fact and Conclusions of Law.
March 1, 1993	The court entered its Judgment in Favor of Plaintiffs Orin S. Jackson and Doris M. J. Jackson Against Defendant Danny Harris Jenkins (March 1, 1993 Judgment).
February 11, 1997	In response to Jenkins' appeal in nos. 16978 and 17456, this court affirmed the March 1, 1993 Judgment.

Prior Appeal No. 18571

November 15, 1993	The circuit court entered an order granting a motion to dismiss the complaint filed in Jenkins v. Cades Schutte Fleming & Wright, Civil No. 93-3359-08, First Circuit Court, State of Hawai'i.
April 28, 1997	In response to Jenkins' appeal in no. 18571, this court affirmed the order.

Prior Appeal No. 19698

January 21, 1994	The circuit court entered an order granting a motion to dismiss the

	complaint filed in Jenkins v. Cades Schutte Fleming & Wright, Civil No. 93-3956-10, First Circuit Court, State of Hawai'i.
May 5, 1997	In response to Jenkins' appeal in no. 19698, this court affirmed the order.

This Appeal No. 24169

January 4, 2001	Jenkins filed a motion, pursuant to Hawai'i Rules of Civil Procedure Rule 60(b)(4), to vacate the March 1, 1993 Judgment.
February 23, 2001	The circuit court entered its order denying the motion.
March 23, 2001	Jenkins filed the notice of this appeal.

DISCUSSION

It has been concluded that a judgment is void when the court entering it acted in a manner inconsistent with due process of law. 11 Wright, Miller & Kane, Federal Practice and Procedure, Civil 2d § 2862 (1995).

In the First Amended Opening Brief, Jenkins presents the following four points on appeal:

1. POINT 1: the court below erred in denying the motion to vacate the Judgment because

> the trial court erred in permitting the jury to decide whether or not [Jenkins] was in breach of the Lease.
>
> . . . .
>
> 2. POINT 2: The court below erred in denying the motion to vacate the Judgment because the trial court erred in permitting the jury to decide whether or not there existed an oral contract to convey Parcel 10 for $105,000. . . .[1/]
>
> . . . .
>
> 3. POINT 3: The Court below erred in denying the motion to vacate the Judgment because the trial court erred by ignoring the jury's answer to special verdict interrogative 16 which was inconsistent with special verdict interrogatives 1, 2, and 3.
>
> . . . .
>
> 4. POINT 4: The court below erred in denying the motion to vacate the Judgment because the trial court erred in approving a form of deed for Parcels 9 and 10 that deleted any reference to the existing mortgages encumbering those properties.[2/]

(Footnotes added.)

Jenkins contends that the March 1, 1993 Judgment is void because the errors alleged in his four points led to the March 1, 1993 Judgment, the errors alleged in his first three

---

1/ Defendant-Appellant Danny Harris Jenkins (Jenkins) also argues that, as a matter of law, the acts claimed to have

been done in part performance (placing a house on Parcel 9 and various agricultural activities) were insufficient to establish part performance. In appeal nos. 16978 and 17456, this court decided in its Summary Disposition Order No. 97-12, entered on February 11, 1997, in relevant part as follows: "2. There was substantial evidence to establish the existence of an oral contract for the sale of Parcel 10 for $105,000."

2/ In Jenkins v. Cades Schutte Fleming & Wright, Civil No. 93-3359-08, First Circuit Court, State of Hawai'i, Jenkins sued Plaintiffs-Appellees Orin S. Jackson and Doris M. J. Jackson seeking to enforce his view of the March 1, 1993 Judgment. The trial court confirmed the conveyance of Parcels 9 and 10 free and clear. In appeal no. 18571, we summarily dismissed the appeal by Jenkins.

points violated Jenkins' right to due process, and the error alleged in his fourth point deprived the trial court of jurisdiction to convey parcels 9 and 10 to Plaintiffs-Appellees Orin S. Jackson and Doris M. J. Jackson (Jacksons) free and clear of the mortgage liens.

We conclude that (a) Jenkins has failed to show that the alleged errors were errors, and (b) any alleged errors that were errors (1) were not violations of Jenkins' right to due process of law and (2) did not deprive the trial court of jurisdiction to convey parcels 9 and 10 to the Jacksons free and clear of the mortgage liens.

CONCLUSION

Accordingly, we affirm the circuit court's February 23, 2001 "Order Denying Defendant Danny Harris Jenkins'

Motion to Vacate Judgment Filed on January 4, 2001."

DATED: Honolulu, Hawai'i, July 18, 2002.

On the briefs:

Danny Harris Jenkins
Defendant-Appellant, *pro se*

"S/ James S. Burns"
Chief Judge

Philip J. Leas and
James H. Ashford (Cades,
Schutte Fleming & Wright)
For Plaintiffs-Appellees.

"S/ Corrine K.A. Watanabe"
Associate Judge

"S/ Lim J.J."
Associate Judge"

Appendix H

FILED

2002 AUG - 5 P 4:00

EUGENE L. SABADO
CLERK. APPELLATE COURTS
STATE OF HAWAII

NO. 24169

IN THE SUPREME COURT OF THE STATE OF HAWAII

ORIN S. JACKSON and DORIS M. J. JACKSON,
Plaintiffs-Appellees-Respondents,

vs.

DANNY HARRIS JENKINS, Defendant-Appellant-Petitioner,

and

JOHN DOES 1-10, DOE PARTNERSHIPS 1-5, and DOE CORPORATIONS 1-5,
Defendants.

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CIV. NO. 90-3753)

ORDER DENYING APPLICATION FOR WRIT OF CERTIORARI

(By Nakayama, J., for the court[1])

Petitioner-Appellant's application for writ of certiorari filed on July 25, 2002, is hereby denied.

DATED: Honolulu, Hawai'i, August 5, 2002.

FOR THE COURT:

"s/Nakayama"
Associate Justice

Danny Harris Jenkins
Petitioner-appellant pro se
On the writ

---

[1] Considered by: Moon, C.J., Levinson, Nakayama, and Ramil, JJ. And Circuit Judge Simms in place of Acoba, J., recused.

Appendix I

FILED

2002 OCT - 1 AM 10:37

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAI'I

NO. 24169

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

ORIN S. JACKSON and DORIS M.J. JACKSON, Plaintiffs-Appellees, vs. DANNY HARRIS JENKINS, Defendant-Appellant, and JOHN DOES 1-10, DOE PARTNERSHIPS 1-5, and DOE CORPORATIONS 1-5, Defendants.	CIVIL NO. 90-3753-11 (Contract) APPEAL FROM THE ORDER DENYING DEFENDANT DANNY HARRIS JENKINS' MOTION TO VACATE JUDGMENT FILED ON JANUARY 4, 2001 FIRST CIRCUIT COURT HONORABLE SIMEON ACOBA HONORABLE PATRICK YIM HONORABLE ROBERT KLEIN HONORABLE HERBERT SHIMABUKURO

HONORABLE WENDELL HUDDY
HONORABLE THOMAS KAULUKUKUI
HONORABLE WILFRED WATANABE
HONORABLE MELVIN SOONG
HONORABLE KEVIN CHANG
HONORABLE VIRGINIA CRANDALL
HONORABLE KAREN BLONDIN
HONORABLE VICTORIA MARKS
HONORABLE GARY W.B. CHANG
Judges

NOTICE and JUDGMENT ON APPEAL

CERTIFICATE OF SERVICE

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PHILIP J. LEAS 1467-0
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Attorneys for Plaintiff -
Appellees ORIN S. JACKSON and
DORIS M.J. JACKSON

NO. 24169

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

ORIN S. JACKSON and DORIS M.J. JACKSON, Plaintiffs-Appellees, vs. DANNY HARRIS JENKINS, Defendant-Appellant, and JOHN DOES 1-10, DOE PARTNERSHIPS 1-5, and DOE CORPORATIONS 1-5, Defendants.	CIVIL NO. 90-3753-11 (Contract) APPEAL FROM THE ORDER DENYING DEFENDANT DANNY HARRIS JENKINS' MOTION TO VACATE JUDGMENT FILED ON JANUARY 4, 2001 FIRST CIRCUIT COURT HONORABLE SIMEON ACOBA HONORABLE PATRICK YIM HONORABLE ROBERT KLEIN HONORABLE HERBERT SHIMABUKURO HONORABLE WENDELL HUDDY HONORABLE THOMAS KAULUKUKUI HONORABLE WILFRED WATANABE HONORABLE MELVIN SOONG HONORABLE KEVIN CHANG

HONORABLE VIRGINIA CRANDALL
HONORABLE KAREN BLONDIN
HONORABLE VICTORIA MARKS
HONORABLE GARY W.B. CHANG
Judges

NOTICE and JUDGMENT ON APPEAL

TO: THE HONORABLE PRESIDING JUDGE OF THE CIRCUIT COURT OF THE FIRST CIRCUIT OF THE STATE OF HAWAI'I

Please take notice that the following Judgment on Appeal is entered this date by the Intermediate Court of Appeals of the State of Hawai'i:

Pursuant to Memorandum Opinion of the Intermediate Court of Appeals entered on July 18, 2002, the circuit court's "Order Denying Defendant Danny Harris Jenkins' Motion to Vacate Judgment Filed on January 4, 2001," which order was entered on February 23, 2001, is affirmed.

DATED: Honolulu, Hawai'i, Oct 1 2002.

BY THE COURT:

"S/K. Hamakado"

Clerk

APPROVED:

"S/ James S. Burns"

Judge of the Above-Entitled Court

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of NOTICE and JUDGMENT ON APPEAL, was served this day by United States Mail, postage prepaid, to Defendant as follows:

DANNY HARRIS JENKINS
1164 Bishop Street, Suite 124
Box 412
Honolulu, Hawaii 96813
Plaintiff Pro se

DATED: Honolulu, Hawaii, July 23, 2002.

CADES SCHUTTE FLEMING & WRIGHT
A Limited Liability Law Company

"S/ Philip J. Leas"

PHILIP J. LEAS
JAMES H. ASHFORD
Attorneys for Plaintiffs-Appellees
ORIN S. JACKSON and DORIS M.J. JACKSON